

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOUGLAS T. JOHNSON,

Defendant-Appellant.

UNPUBLISHED

October 3, 2000

No. 222013

Oakland Circuit Court

LC Nos. 91-105483-FH

91-105485-FH;

91-105503-FH;

91-105504-FH;

91-105505-FH;

91-105506-FH

Before: McDonald, P.J., and Sawyer and White, JJ.

PER CURIAM.

Defendant claims an appeal from amended judgments imposing concurrent sentences of two to five years for three plea-based convictions of larceny by conversion over \$100, MCL 750.362; MSA 28.594, and two to ten years for three plea-based convictions of false pretenses over \$100, MCL 750.218; MSA 28.415. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On December 26, 1991 defendant pleaded nolo contendere to three counts of larceny by conversion and three counts of false pretenses. Sentencing occurred on March 25, 1993. At that time, the offense of larceny carried a statutory maximum term of five years, and the offense of false pretenses carried a statutory maximum term of ten years. The trial court inadvertently switched the maximum terms, and sentenced defendant to concurrent terms of two to ten years for the larceny convictions, and two to five years for the false pretenses convictions. The error was not detected at the time, and was not raised in subsequent appellate proceedings.

On June 22, 1999, the trial court, acting sua sponte, amended the judgments and imposed a maximum term of ten years for each conviction of false pretenses, and a maximum term of five years for each conviction of larceny. In response to defendant's request, the trial court filed a claim of appeal and appointed appellate counsel. Defendant moved for resentencing, seeking reinstatement of the five-year

maximum terms for the false pretenses convictions, as originally imposed in 1993. In the alternative, defendant argued that he was entitled to be sentenced to the new five-year maximum penalty of five years for false pretenses, as enacted by 1998 PA 312. The trial court denied the motion for resentencing in all respects.

This case presents a question of law, which we review de novo. *People v Denio*, 454 Mich 691, 698; 564 NW2d 13 (1997).

Defendant argues that he was denied due process by the trial court's amendment of the judgments to impose a ten-year maximum term for each conviction of false pretenses because he had a legitimate expectation of finality in those sentences. We disagree and affirm the amended sentences. Because the sentences as originally imposed did not state the correct statutory maximum term, they were invalid. See *People v Mitchell*, 175 Mich App 83, 93-94; 437 NW2d 304 (1989). Correction of the invalid sentences was a ministerial act, and did not require a full resentencing. *People v Miles*, 454 Mich 90, 99; 559 NW2d 299 (1997). Moreover, amendment of the judgments did not result in prejudice to defendant. Defendant expected to serve three sentences of two to five years, and three sentences of two to ten years. Amendment of the judgments to reflect the correct statutory maximum terms did not alter the amount of time defendant was required to serve. No error occurred.

Furthermore, defendant argues that he is entitled to the benefit of 1998 PA 312, effective January 1, 1999, which reduced the statutory maximum penalty for false pretenses between \$1,000 and \$20,000 to five years. MCL 750.218(4)(a); MSA 28.415(4)(a). We disagree and affirm the amended sentences. As a general rule, the proper sentence is that which was in effect at the time the offense was committed. *People v Schultz*, 435 Mich 517, 530; 460 NW2d 505 (1990). A narrow exception exists which allows application of a lower penalty if the penalty takes effect at the time a direct appeal is pending. *Id.*, 526. Here, no direct appeal was pending when 1998 PA 312 took effect. Defendant is not entitled to retroactive application of the lower statutory maximum penalty for false pretenses.

Affirmed.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Helene N. White